WP(C) 8945/2004
BEFORE
THE HON'BLE MR JUSTICE AFTAB H. SAIKIA

JUDGEMENT & ORDER(ORAL)

Heard Mr. A.M.Mazumdar,learned Sr. Counsel assisted by Mr. F.K.R.Ahmed, learned counsel for the petitioner. Also heard Mr. A.K.Bora, learned CGC representing t he Union of India and others.

2. The legality and correctness of the order dated 15.9.2004 passed by the Appellate Authority i.e. the Deputy Inspector General of Police, Rapid Action Fo rce ,Central Reserve Police Force, (for short,' the CRPF) affirming the ini tial order of dismissal of the petitioner from service vide order dated 14.6.20 03 passed by the Commandant of the CRPF has been assailed in this writ petitio n.

3. The pleaded case of the petitioner expressed in this writ petition sup ported by an additional affidavit is that while the petitioner was enjoying Ea rned Leave w.e.f.6.5.02 to 25.5.02 , unfortunately he fell ill and had to be ho spitalized that took long time for his recovery. In such process, he overstayed by at least 5 months beyond his sanctioned leave .Meanwhile, to his utter surp rise, a warrant of arrest was issued by the authority, however the same was no t executed. He was, thereafter, informed that he was placed under suspension w.e.f. 15.11.2002.

4. It is also contended that in the meantime to his misfortune the peti tioner lost his minor son on 15.11.02 for which he had to submit application praying for extension of leave .

5. On consideration of the representation so submitted by the petitioner be fore the authority , the petitioner's suspension was revoked w.e.f. 4.2.03. Nev ertheless , he could not proceed to the place of posting due to his deterio rated ill health .

6. Sequel to such non- joining in the place of posting after revocation of suspension order ,the authority concerned proceeded with the Department procee dings against the petitioner and eventually the petitioner was dismissed from service vide impugned order dated 14.-6.03 passed by the Commandant -104 Bn. RA F, CRPF, Aligarh and the same was served upon him at his home village at Adhika ri, P.O. Rajghat under Mangaldoi Police Station in the district of Darrang.

7. Being aggrieved by such dismissal order, the petitioner, preferred the s tatutory appeal before the appellate authoprity .i.e. viz. DIG,RAF,CRPF,New-Delh i who in turn by impugned order dated 15.9.04 dismissed the appeal holding that there was no good reasons to interfere with the impugned dismissal order passed by the Commandant=104 RAF,CRPF and the same was passed after giving full opport unity of hearing in a formal departmental enquiry so proceeded against him.

8. Mr. Mazumdar, learned Sr. counsel assailing both the orders i.e. the ini tial order of dismissal and the appellate order affirming the same, has veheme ntly argued that punishment of dismissal against the petitioner is absolutely d isproportionate to the offence allegedly committed by the petitioner i.e. unaut horized absence for the period from 27.5.02 to 15.8.02. His clear stand is that though in the initial order dated 14.06.03 there were three charges levelled ag ainst the petitioner as mentioned in the statement of Articles which pin poin tedly indicate the unauthorized overstayed leave from 25.07.02 to 15.08.02, he w as shown to have overstayed leave on previous as many as 6(six) occasions th at has been reflected at paragraph 3 (j)(2) of the impugned order dated 14.6. 2003 though no separate charge was leveled against such alleged unauthorized lea ve. The learned Sr. Counsel has fairly submitted that instead of punishment of dismissal from service, the petitioner would have been inflicted with any other lesser punishment . The reason for such submission is that admittedly there was

no charge against the petitioner to the effect that he failed to discharge h is duty with sincerely, honestly and diligently and his unauthorized absence can not be said to be the act prejudicial to the disciplined force. His only offen ce was he remained in unauthorized absence and that too due to his own illness plus death of his minor son. Under such circumstances the dismissal of service by the impugned order can be said to be shocking the conscience.

9. Per contra, Mr. Bora, the learned C.G.C. refuting the submissions and co ntentions advanced by the learned Sr. counsel, has submitted that the offence c ommitted by the petitioner, being a major offence , the impugned dismissal from service cannot be said to disproportionate to such allegation which were found to be proved. In order to drive home his submission, learned C.G.C. has referr ed to provision of Section 10 and 11 of the Central Reserve Police Force Act, 19 49 (for short, ' the Act') wherein punishment of such nature has been prescribed .

10. Surprisingly, be it noted that no such punishment for dismissal has be en prescribed under those cited provision of law under the Statute book.

11. It would be necessary to quote the relevant portion of those provisions of law as relied upon by Mr. Bora.

10. Less heinous offences.- Every member of the Force who-
(a) &
(b) &
(m) absent himself without leave , or without sufficient cause overstays leave g ranted to him; or
&
shall be punishable with imprisonment for a term which may extend to one year, o r with fine which may extend to three months' pay , or with both.

11. Minor punishments-(1) The Commandant or any other authority or officer as ma y be prescribed , may , subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobed ience, neglect of duty, or remissness in the discharge of any duty of other misc onduct in his capacity as a member of the force, ha is to say,-
(a) reduction in rank;
(b) fine of any amount not exceeding one month's pay and allowance.
(c) Confinement to quarters, lines or camp for a team not exceeding one mont h;
(d) Confinement in the quarter-guard for not more than twenty-eight days, w ith or without punishment drill or extra guard, fatigue or other duty; and
(e) Removal from any office of distinction or special emolument in the Force .

12. An ordinary reading of the above provision of law would go to demonstrat e that for absence without leave, or without sufficient cause overstays lea ve granted cannot literally be said to be an offence for which punishment like dismissal from service can be inflicted .

13. Section 10 speaks of only punishment of imprisonment which may extend t o one year or with a fine which may extend to three months pay or with both. It clearly indicates that there is no provision for dismissal for such offence lik e remaining absent without leave. On the other hand , under the head of minor punishment as prescribed under Section 11, it only indicates about as many as fi ve punishments which are -(a) reduction in rank; (b) fine of any amount not exce eding one month's pay and allowance.(c)Confinement to quarters, lines or camp fo r a team not exceeding one month;(d) Confinement in the quarter-guard for not mo re than twenty-eight days, with or without punishment drill or extra guard, fat igue or other duty and (e) Removal from any office of distinction or special em olument in the Force.

Nowhere in this provision, dismissal is prescribed as punishment for unauthori

zed leave. It may fall under the head of Less heinous offences under Section 10 of the Act.

14. Be that as it may, since departmental proceeding initiated against the petitioner following the procedural law and the findings of the departmental proceeding has also been confirmed by the appellate authority , this Court in exercise of power conferred under Section 226 of the Constitution of India cannot sit as a Court of Appeal to find fault with the findings of both the authorities as mentioned above. The impugned finding of guilt against the petitioner is, therefore, not interfered with.

15. Nevertheless, considering the submissions of Mr. Mazumdar, learned Sr. Counsel, the Court has now only to delve upon the quantum of punishment .

16. Keeping in view the mitigating circumstances as narrated by the petitioner which have also been admitted by the respondents to the effect that he had to over stay due to his serious illness and also due to pre-mature death of his minor son, this Court is of the considered view that punishment of dismissal for such unauthorized overstay is shocking the conscience of the Court and accordingly the competent authorities is directed to reconsider their decision as regards the quantum of punishment to be inflicted upon the petitioner save and except the dismissal from service .

17. In view of what has been stated ,discussed and observed above, this writ petition stands disposed of to the extend indicated above. No costs.